Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term 1978

No. 78-570

PREMIER CORPORATION,

Petitioner,

v.

SHEVIN, SHAPO & SHEVIN, P.A.,

Respondent.

PETITIONER'S REPLY MEMORANDUM

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Respondent seeks to defeat this Petition by creating, in its opposing brief, the appearance of a factual dispute which can be resolved only by *de novo* review of the Court. In addition, Respondent characterizes the issues raised in the Petition as being of academic interest only and as not constituting important questions of federal law.

Reply to the assertion of a factual dispute poses a dilemma for Petitioner. Unless Respondent's brief is refuted

point-by-point, it might be suggested that those points cannot be refuted. At the same time, any detailed refutation would, in effect, appear to confirm the existence of a relevant factual dispute. That dilemma, however, is more apparent than real, as the essential facts upon which this Petition is based have not, and cannot, be disputed. Those facts are:

(a) The secret settlement agreement with one of the class codefendants, including all of the elements of that settlement, which has been submitted to this Court in the Appendix to the Petition;

(b) The unsuccessful settlement agreement with Petitioner, the effect of which would have been to entirely dispossess the class, which is as well a part of the Appendix; and

(c) The final settlement agreement with the class and with the class representative, and the contrasting terms of those agreements, which likewise have been submitted to this Court.

Those documents, on their face, provide ample basis for decision by this Court upon the issue raised in the Petition. Accordingly, though the temptation is great to refute in detail Respondent's factual contentions, the only necessary reply is again to refer this Court to those documents, as to which no dispute is possible.

Reply to the assertion that the issue in this Petition is "academic" may be similarly brief. The effect of the class litigation in this case was, and is, starkly non-academic and tangible to Petitioner, as a result of the settlements with the class and the class representative and as a result of Respondent's claims in this proceeding. Similarly tangible and non-academic is the documentary evidence referenced above, upon which the issues in this Petition are based. Petitioner's interests are real, and its contentions are hardly

As to the importance of the issues raised in this Petition, the question presented is the appropriate use of class litigation in the federal judicial process, and the required role of counsel in that ligitation. The failure of the lower courts in this case, to address the documentary facts bearing upon that question, rather than detracting from its importance as urged by the Respondent, highlights the need for the direction of this Court in that regard.

Therefore, Petitioner requests that the Petition be granted.

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